

**DEPARTMENT OF STATE REVENUE**  
**SUPPLEMENTARY LETTER OF FINDINGS: 01-0083**  
**Use Tax**  
**For 1997 and 1998**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Gross Retail and Use Taxes.**

**Authority:** IC 6-2.5-3-2(a); IC 6-2.5-3-4(a); IC 6-2.5-3-7(a).

On the ground that taxpayer paid sales tax at the time he originally bought the materials, taxpayer argues that he is not subject to use tax on materials used in his mailbox business.

**STATEMENT OF FACTS**

Taxpayer constructs, sells, and installs mailboxes. The Department of Revenue (Department) conducted an audit review of taxpayer's business records. The audit asked taxpayer to provide records to show that he had properly determined his use tax liability. According to the audit, the taxpayer was provided 60 days during which to provide the records. According to the audit, taxpayer was given written notice that "if the requested information [is] not made available . . . the audit will be completed based on the best information available to the auditor." When taxpayer failed to provide the records, the audit assessed use tax based on the best available records.

Taxpayer protested. The protest was assigned to the original hearing officer. The original hearing officer contacted taxpayer's representative asking for the records to substantiate the protest. Neither taxpayer nor taxpayer's representative ever supplied the necessary records. Thereafter, the original hearing officer prepared and issued a Letter of Findings in which taxpayer's protest was denied.

On the ground that he had been denied the opportunity to substantiate his original protest, taxpayer asked for a rehearing on the matter. That rehearing was granted. Taxpayer and the taxpayer's representative met with the Hearing Officer, and this Supplementary Letter of Findings results.

**DISCUSSION**

Taxpayer maintains that he is not subject to use tax on materials used in carrying out his mailbox business.

Pursuant to IC 6-2.5-3-2(a), "An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction . . . ." However, a use tax exemption is provided at IC 6-2.5-3-4(a) which states that, "The storage, use, and consumption of tangible personal property in Indiana is exempt from the use

tax if: (1) the property was acquired in a retail transaction in Indian and the state gross retail tax has been paid on the acquisition of that property.”

In determining whether a person is liable for use tax or is entitled to an exemption, Indiana law states that, “A person who acquires tangible personal property from a retail merchant for delivery in Indiana is *presumed* to have acquired the property for storage, use, or consumption in Indiana unless the person or the retail merchant can produce evidence to rebut that presumption.” IC 6-2.5-3-7(a) (*Emphasis added*).

The audit quite correctly determined that taxpayer’s materials were subject to use tax because taxpayer failed to rebut the statutory presumption. The original Letter of Findings also correctly found that taxpayer’s materials were subject to use tax because taxpayer did nothing to rebut the statutory presumption.

Nonetheless – and after substantial delay – taxpayer has provided a representative set of invoices for 1997. Taxpayer asserts that he is also able to produce 1998 invoices. Based on the representative set of invoices, it appears that taxpayer paid sales tax on certain of the materials for which the audit assessed use tax. Based on the invoices provided, the Department is willing to defer to taxpayer’s assertion that the original use tax assessment – based upon the best information then available – should be adjusted to comport with the records taxpayer now makes available. The Department will ask that a supplemental audit be conducted in order to review the available records.

The Department has allowed taxpayer extraordinary latitude in granting taxpayer’s request for a rehearing on this matter. It should be noted that significant delay has resulted from taxpayer’s own failure to produce the records when requested by both the original audit and by the original hearing officer. Any further delay whatsoever in providing these records at the time of the supplemental audit will fully justify a finding that taxpayer has defaulted on the opportunity herein provided. Consequently, taxpayer will have exhausted his administrative remedies without finding the remedy he seeks.

### **FINDING**

Subject to the results of the Supplemental Audit, taxpayer’s protest is sustained.